S.B.Civil Second Appeal No.113/2007
Mani Ram & Anr.
vs
State of Rajasthan & Ors.

Date of order : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.SD Goswami, for the appellant.
Mr.HR Soni, for the State.
Mr. Nitin Trivedi, for the respondents.

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The appellant is aggrieved against the concurrent finding of fact recorded by the two courts below which have been recorded in the judgments and decrees dated 5th Sept., 2006 and 21st Nov., 2006.

It appears from the facts of the case that two plaintiffs filed the suit for injunction in the year 2003 with the allegation that the land in question is reserved for public purposes and defendants, particularly, defendant no.2 School Development Committee has started auctioning the land for agricultural purposes. Therefore, plaintiffs sought injunction against the defendants, who are the Principal of the School,Chairman of the School Development Committee and the State Government. In the trial court the defendants produced documentary evidence to show that the land is in fact, is used for public purposes and for that purpose, only the land is put to auction for agricultural purposes also

so that its income can be used for the school which is also public purpose. The defendants also produced documentary evidence that this is being done since 1985 and it is continuing since then till filing of suit and, thereafter also.

The courts below found that plaintiffs failed to prove that land was not used for the purpose as claimed by them and by the villagers.

Learned counsel for the plaintiffs-appellants vehemently submitted that it is admitted position that the land in question is a public utility land and, therefore, in view of the said admission alone, the defendants had no right to put the land for agricultural purposes and earned from that land. It is also submitted that even if the defendants started using the land for agricultural purposes by auctioning it and started earing from the year 1985 and continue for long time then that cannot make their illegal act as legal because of only lapse of time.

I considered the submissions of learned counsel for the parties and perused the record also.

The suit for injunction has been filed by the plaintiffs. The relief of injunction is equitable relief and can be denied when the relief is sought after inordinate delay. The relief can be denied even when there is a acquiescence. In this case, the

defendants proved the fact that land in question is used by them since 1985 and almost for 20 years the land is being used for that purposes then there cannot arise any question of land being used for the purpose of recreation purpose of the villagers. The very foundation of the suit is that the land is meant for recreation acitivites of the villagers stands nullified by the positive evidence of the defendants which has not been rebutted by the plaintiff. Apart from fact that there is no evidence that land was used as recreation ground.

Apart from above it appears that plaintiffs have filed the suit not in representative capacity if it was a land of public utility. Be that as it may be, the finding of fact recorded by the two courts below is based on appreciation of evidence as well as after taking care of all the surrounding circumstances,one of which is very relevant is that earing from the land is used for the construction and running of school. Therefore, it is also a public purpose.

In view of the above, I do not find any substantial question of law involved in this appeal. Hence, the appeal of the appellant is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-